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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 KINAYA HEWLETT, on behalf of herself
12 and all others similarly situated,

13 Plaintiff,

14 v.

15 CONSOLIDATED WORLD TRAVEL
16 INC, d/b/a HOLIDAY CRUISE LINE,

17 Defendant.

No. 2:16-cv-0713 WBS AC

ORDER

18 The parties have filed a Stipulated Protective Order Regarding Confidentiality. ECF
19 No. 39. The matter was referred to the undersigned by E.D. Cal. R. (“Local Rule”) 302(c)(1).
20 For the reasons set forth below, the Stipulation will not be approved in its current form.

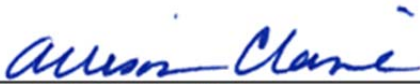
21 The Stipulation governs, among other things, the disposition of materials claimed to be
22 privileged or protected that were inadvertently produced in discovery, and over which the
23 producing party subsequently asserts a privilege or protection. See ECF No. 39 at 11-12 ¶ 23.
24 The Stipulation correctly cites Fed. R. Civ. P. (“Rule”) 26(b)(5)(B), as governing inadvertent
25 disclosures of such materials.

26 However, while the Stipulation uses the general language of Rule 26(b)(5)(B), calling for
27 the receiving party to “promptly present the information to the Court under seal for a
28 determination of the privilege or protection claim ...,” it fails to clarify that such a presentation

1 must be in the form of a motion, governed by Local Rule 251. The court will not approve a
2 stipulation that seemingly authorizes a party to simply file documents under seal, at any time,
3 without adversary briefing, and request a court determination. Any such determination will be
4 made only upon a noticed motion filed under Local Rule 251. In any such motion, the court
5 authorizes the parties to file the disputed documents under seal, and to file redacted briefing.

6 For the reasons stated above, IT IS HEREBY ORDERED that the Stipulation and
7 proposed order (ECF No. 39), is NOT APPROVED. The parties may renew the stipulation with
8 language clarifying that inadvertently disclosed privileged matter will be brought to the attention
9 of the court through a noticed motion.

10 DATED: December 12, 2016

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12 ALLISON CLAIRE
13 UNITED STATES MAGISTRATE JUDGE
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